

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

MARIN GENERAL HOSPITAL

Employer

and

Case 20-RC-234459

**NATIONAL UNION OF HEALTHCARE
WORKERS**

Petitioner

DECISION AND DIRECTION OF ELECTION

Marin General Hospital (Employer) operates an acute-care hospital located in Greenbrae and Larkspur, California. By its petition, and as clarified on the record, the National Union of Healthcare Workers (Petitioner) seeks an *Armour-Globe*¹ (self-determination) election among a unit of approximately twenty-seven full-time and regular part-time (including per diem) unrepresented Pharmacy Technicians (PTs), Clinical Systems Pharmacy Technicians (CSPTs), Nuclear Medicine Technicians,² and Nuclear Cardiovascular Technicians,³ to determine whether they wish to be included in the existing Technical Unit⁴ comprised of Radiology Technicians, MRI Technicians, CT Technicians, Ultrasound Technicians, Cardiac Sonographers, Interventional/Cardiac/EP Technicians, and Leads in those respective classifications employed by the Employer.

The existing Technical Unit is nonconforming to the extent that it does not include all technical employees employed by the Employer. Another labor organization represents a mixed unit comprised of service and maintenance employees and some technical employees that are not encompassed by the instant Petition. The Board's Health Care Rule specifically excepts from its coverage "existing nonconforming units," such as the existing non-conforming unit in the instant case. See *Crittenton Hospital*, 328 NLRB 879 (1999). Accordingly, a union may petition for a

¹ See *Globe Machine and Stamping Co.*, 3 NLRB 294 (1937); *Armour and Company*, 40 NLRB 1333 (1942).

² At hearing, the parties agreed that it is appropriate to include the Nuclear Medicine Technicians and Nuclear Cardiovascular Technicians in the petitioned-for unit; thus, leaving the inclusion of PTs and CSPTs in the voting unit as the only remaining litigable issue.

³ Petitioner clarified that it does not seek to represent the Medication Reconciliation Technicians or the Supervising Pharmacy Technician(s).

⁴ The existing Technical Unit was previously represented by the Radiology Associates until that labor organization merged with Petitioner in 2016. Petitioner has represented the Technical Unit since that time.

self-determination election among a small group of residual employees, such as here, to determine whether they wish to join an existing non-conforming unit already represented by the union.⁵ In *St. Vincent Charity Medical Center*, 357 NLRB No. 79 (2011), the Board found that a self-determination election is not contrary to the Health Care Rule, and avoids any proliferation of units as it does not result in the creation of a separate, additional unit. It concluded that “the proper analysis is whether the employees in the proposed voting group share a community of interest with the currently represented employees and whether they constitute an identifiable, distinct segment.” Thus, Petitioner bears the burden of proving that the PTs and CSPTs are technical employees, as contemplated by the Board,⁶ and if so, whether they are a distinct segment that shares a community of interest with the existing Technical Unit.

The Employer asserts that the petitioned-for voting unit is inappropriate because: 1) the PTs and CSPTs are not “technical” employees who should be included in the existing Technical Unit, and 2) the PTs and CSPTs do not share a community of interest with the existing Technical Unit.

A hearing officer of the Board held a hearing in this matter and the parties litigated the above issues and orally argued their respective positions prior to the close of the hearing. As explained below, based on the record and relevant Board law, I find that the petitioned-for unit is an appropriate voting group for the self-determination election sought herein.

I. FACTS

A. Pharmacy Technicians

The Employer employs about twenty Pharmacy Technicians (PTs). The Employer’s written job description for PTs lists the following educational requirements: Two years of college with appropriate science courses or completion of a formal Pharmacy Technician program. Although not included in the job description, the Employer requires PTs to be currently registered and licensed as a Pharmacy Technician in the state of California. The record evidence shows that in order to receive their state Pharmacy Technician license, a PT is required to have completed a formal Pharmacy Technician program. Witness testimony indicates that PTs normally have a high school degree, two years of college, a certificate of completion from a pharmacy technical course (of about one year in duration), and completion of a six-week internship. The Employer does not require PTs to be certified to work nationwide,⁷ although it does employ several PTs

⁵ In contrast, it is well-established Board law that a union may not petition for a separate residual unit. *St. John’s Hospital*, 307 NLRB 767, 768 (1992), citing *Budd Co.*, 154 NLRB 421, 428 (1965), and *McKeesport Hospital*, 220 NLRB 1141 (1975).

⁶ See e.g., *Nathan and Miriam Barnert d/b/a Barnert Memorial Hospital Center*, 217 NLRB 775 (1975).

⁷ The Employer requires PTs to receive an internal certification concerning hazardous material handling if they work in chemotherapy processes.

who are certified nationwide. PTs that are certified to work nationwide require continuing education. However, PTs licensed in California do not require continuing education. PTs earn wages in the range of about \$30 - \$36 per hour, depending on length of tenure with the Employer.

The Employer's facility has two pharmacies within its six-floor facility.⁸ The main pharmacy is located on the second floor. The satellite pharmacy is located on the fifth floor. PTs work in the pharmacies and are supervised by the Pharmacists. Everyone in the pharmacies fall under the direction Pharmacy Director Ms. Therese Helser (Helser).⁹ PTs do not provide direct patient care. There are several shifts for PTs and each one has different job responsibilities: IV, Float, Unit Dose, and Unit Dose II. The record indicates that the IV shift prepares IV bags, the Float shift assists with chemotherapy procedures and delivers drugs, and the Unit Dose shift delivers drugs to the Pyxis machines in the various departments.¹⁰

In the pharmacy, PTs fill prescriptions and medicine orders supervised by a pharmacist, who must approve their work before it goes out. PTs package drugs in the appropriate containers. PTs also organize drugs on the shelf after the Pharmacist has checked them into the pharmacy. PTs do not have any input into the prescription or amount of medicine ordered, nor can they change a doctor's order.

PTs also prepare IV medicine bags, and those PTs certified in chemotherapy also prepare chemotherapy medicine bags. Via the computer system, the pharmacy receives orders to prepare IV and chemotherapy medicine bags. For each order, the system prints out labels showing the patient's name, the drug needed in the bag, the amount of saline or water needed in the bag, and the time the bag is due. Based on these labels, PTs prepare the medicine bags. PTs are often required to compound the medication that goes into these bags. When compounding medications, PTs follow medication inserts or other medical sources that direct them on how to prepare and formulate the medication that is injected into the bag. PTs do not create the medication inserts or formula. Sometimes, PTs are required to enter the pre-determined formula into the computer system. While preparing an IV or chemotherapy medicine bag, PTs must take photographs at various stages of the process to show to the Pharmacist for approval. For chemotherapy bags, the pharmacist must physically check the syringe before the PT injects it into the bag. For each drug that must be compounded, the Employer sets minimum quantity amounts that must be in inventory. This set minimum is referred to as the "par level." PTs must analyze how much of each drug will be used and how much needs to be made to ensure that the par level is satisfied. PTs do not need a pharmacist's permission to determine the amount of a drug to make.

⁸ Although the parties stipulated that the Employer operates an acute-care hospital in Greenbrae and Larkspur, California, testimony was limited to the Greenbrae acute-care facility, and did not include the out-patient facility in Larkspur.

⁹ Helser reports to Vice President of Ancillary Services Ken Cortes, who reports to the CEO.

¹⁰ No evidence was produced at hearing describing the responsibilities of the Unit Dose II shift.

Every day, PTs independently prioritize the manner in which they complete all their assigned tasks, which include, but are not limited to, delivering drugs to the various departments, troubleshooting Pyxis machines, handling urgent matters and orders that unexpectedly arise, and fulfilling doctors' IV and chemotherapy medicine bag orders. As discussed above, each IV and chemotherapy medicine bag order has a label that shows the time when the order must be completed. Typically, upon arrival in the morning, PTs will already have numerous order labels to fulfill. New order labels continuously come in throughout the day. PTs do not fulfill the orders on a first-come, first-serve basis. Rather, PTs prioritize the orders as they see fit, depending on the situations presented. For example, PTs consider factors such as the urgency of the order, the amount of time it will take to complete the order, and the time/deadline the order is due.¹¹ PTs often decide to group all the orders that they can complete the fastest and work on that group first. PTs also regularly decide to work on orders for pain medication first, in order to keep patients comfortable.

PTs also help maintain the approximately 32 Pyxis machines located in the Employer's various departments. Pyxis machines are essentially drug "vending machines" that dispense drugs to doctors, nurses, and Radiology technicians for their work. For ease of reference, herein the term "Radiology technicians" refers to the technicians in the existing Technical Unit: Radiology Technicians, MRI Technicians, CT Technicians, Ultrasound Technicians, Cardiac Sonographers, Interventional/Cardiac/EP Technicians, and Leads in those respective classifications employed by the Employer. Pyxis machines have several drawers that contain about 50 – 60 compartments, each containing different types of drugs. The machine only allows specific classifications of employees to access certain drugs. For example, there are drugs that Registered Nurses (RNs) can access, but Radiology technicians cannot. The type of drugs in each Pyxis machine depends on the drug needs of the department in which the Pyxis machine is located. For example, the Pyxis machine in the Radiology department contains many contrast medications for X-rays. On the other hand, the Pyxis machine in the Emergency Room contains many pain medications. PTs have no authority to decide the type or amounts of drugs that will be placed in the Pyxis machines. However, PTs might inform a Pharmacist that a Pyxis machine may need more of a certain type of drug. Every day, Pyxis machines automatically generate "cart fill" reports showing the drugs that each machine requires to be refilled. The night shift PT reviews this report and fills a cart with drugs according to the report. In the morning, the Unit Dose shift PT transports the cart throughout the facility, delivering the drugs to the Pyxis machines. PTs do not distribute or dispense medication to patients.

Registered Nurses (RNs) regularly contact PTs to fix Pyxis machines. By way of example, an RN will inform PTs that a Pyxis machine is not dispensing a certain drug. To troubleshoot this problem, PTs open the compartment where the drug is located, and will possibly reconfigure how the drugs are organized in each compartment within the machine to prevent recurrence of the problem. PTs do not require a pharmacist's approval to troubleshoot a Pyxis machine, to reconfigure how the drugs are organized in each compartment, or to sign off

¹¹ PTs do not have any control over an order's deadline, which can only be set, and changed by, the ordering doctor.

on resolution. RNs will also inform PTs that a Pyxis machine reports a quantity of a certain drug that differs from the actual amount in the machine. This is known as a “variance.” PTs troubleshoot this problem by trying to determine whether the drug was thrown away, not used, or put in the return bin. PTs run reports in the Pyxis machine to follow the drug’s track record, they query RNs about any knowledge they might have regarding the variance, they look at the medication return bins, and they examine other Pyxis machines to see if the missing drugs were misplaced in those machines. Some PTs have the authority to reverse drug transactions if the variance was caused by an incorrect transaction. PTs do not need a pharmacist’s approval to troubleshoot a drug variance issue.

PTs and the Radiology technicians in the existing Technical Unit share no common supervision. They also do not share any interchange as PTs do not fill in for Radiology technicians and vice versa. Like the Employer’s other employees, PTs and Radiology fall under the same Human Resources department. The Employer’s policies and procedures apply to all employees. The main Pharmacy and main Radiology departments are located on the second floor of the facility. They are about fifteen feet away from each other. The Computer Tomography (CT) department is part of the Radiology department. The CT department shares a common wall with the Pharmacy on the 2nd floor. Radiology technicians frequently interact with PTs. PTs often visit the various Radiology departments to fill and troubleshoot the Pyxis machines. When a Pyxis in the Radiology department does not have a certain drug or malfunctions, Radiology technicians summon the PTs to stock or fix the machine. Often, when Radiology technicians have an urgent need for a drug, they obtain drugs directly from the PTs. In that circumstance, the Radiology techs inform the PTs about the drug they need. The PTs record that drug on a charge slip, fetch the medication, show the medication to the pharmacist, enter the charge slip into the system, and give the requested medication to the Radiology technician. Radiology technicians also frequently interact with PTs during lunch in the cafeteria.

B. Clinical Systems Pharmacy Techs

The Employer employs three Clinical Systems Pharmacy Techs (CSPTs). The Employer’s job description for CSPTs lists the following educational requirements: two years of college with appropriate science courses or completion of a formal Pharmacy Technician program. The Employer also requires CSPTs to complete a six-week internship. The Employer requires CPSTs to be currently registered as a Pharmacy Technician in the State of California and to have a current Pharmacy Technician license from the State of California Board of Pharmacy (CA Pharmacy Board). Record evidence shows that in order to obtain the state license, an employee must have completed a formal Pharmacy Technician program that takes about a year to complete. CSPTs attend Employer trainings concerning the Pyxis software, Pyxis ES, to learn how the software interfaces with the Pyxis machines. CSPTs earn wages in the range of about \$30 - \$39 per hour, depending on length of tenure with the Employer.

CSPTs work in the Pharmacy IT trailer next to the IT department, adjacent to the doctors’ parking lot. They also work in the Pharmacy and in other of the Employer’s various departments to work on Pyxis machines. CSPTs report to Pharmacy Informatics Manager Arlene Johnstone. CSPTs do not engage in any direct patient care. CSPTs do not compound drugs. Like PTs,

CSPTs sometimes fill medication orders under the supervision of a pharmacist. CSPTs are mainly tasked with troubleshooting and maintaining the computer system that interfaces with the Pyxis machines, Pyxis software, Paragon,¹² and Pharmogistics. CSPTs maintain the Pyxis machines and their software and programming development for the medications inside them. On the software side, CSPTs build the “formulary,”¹³ add drugs, and build orders for drugs in the computer system and Pyxis machines. When the Employer obtains a new type of drug, CSPTs add that drug into the computer system’s and Pyxis machines’ formulary. CSPTs enter the drug’s name, dosage, frequency, route (i.e. method of drug delivery: oral or injection), form, strength, and billing code. CSPTs work to ensure that the computer system correctly interfaces within the department and outside the department.

CSPTs also install new Pyxis machines in the Radiology department, and work with Radiology technicians to set up new Pyxis machines. CSPTs also work with the Radiology technicians to determine the drugs they need and are authorized to access. The CSPTs then determine which drugs belong in which drawers, trays, and compartments in the Pyxis machine by taking into account efficiency of access and prevention of being locked out of the system for accessing a drawer that contains drugs they are not authorized to access.¹⁴ CSPTs set “security groups” to ensure that only people authorized to access particular drugs are given access to the drawers where those drugs are located. CSPTs then re-program the Pyxis software to coincide with the new manner in which the drugs are organized in the machine and to lock that configuration into the system to prevent a PT from changing the drug configuration in the future. When planning on where to place the different drugs within the Pyxis machine, CSPTs make that determination themselves and do not rely upon any specific Employer policy or set of instructions. CSPTs also help Radiology technicians improve their experience in using Pyxis machines. To illustrate, CSPTs fulfill Radiology technicians’ requests to build a systems kit into the Pyxis software, so that they can easily find certain drugs in the software.

CSPTs troubleshoot the Pyxis machines and their software. In doing so, they review the computer system’s programs and reports, and discuss the problem(s) with pharmacists and nurses. CSPTs also configure the computer system regarding the placement of certain drugs that are pulled from within the facility and by adding different options regarding a drug’s dosage and route. CSPTs ensure that each drug formula is assigned to the correct medication identifier, known as a CDM, to ensure that Paragon and the Pyxis machines interface correctly. Sometimes, nurses inform CSPTs that they cannot dispense certain drugs that are already in the system, and CSPTs will analyze how the drug was built to determine why it will not dispense. Typically, PTs alert CSPTs to malfunctioning Pyxis machines that need troubleshooting. As discussed above, when nurses or Radiology technicians report that they cannot access certain drugs in the Pyxis machine, CSPTs reconfigure the way drugs are placed within the machine and make the corresponding software changes. CSPTs do not need supervisory approval to do this.

¹² Paragon is a software program that doctors use to enter orders for nursing and medications.

¹³ The “formulary” is the menu of drugs that the Employer possesses.

¹⁴ CSPTs have no authority to determine the type of drugs that go into a Pyxis machine.

Approval is generally required for those decisions that change a work process, such as the manner in which pharmacists enter drug orders into the computer system.

CSPTs also create doctor-order sets in the computer system. Order sets are shortcuts on the computer system that allow doctors to set their preferences to easily order drugs. Doctors create order sets on paper, naming the drugs, the doses, the frequencies, the routes, and any comments. CSPTs enter the above information into the computer system to create the order set. Sometimes, CSPTs encounter an order set that contains an unfamiliar dose. In that situation, CSPTs consult with a pharmacist to determine if the correct dose was written on the order set before building it into the system. On occasion, the Pharmacist will instruct the CSPT to contact the nurse who supports the doctor that wrote the order set to determine if the dose is correct.¹⁵

Pharmacists often supervise CSPTs, and CSPTs and PTs share common supervision in those circumstances. CSPTs frequently perform the work of PTs and regularly interact with PTs. In addition to working with PTs in the Pharmacy, CSPTs often consult with PTs regarding their experience in working with the Pyxis machines and their software; especially when PTs encounter computer-system downtime. CSPTs and Radiology technicians do not share common supervision or interchange, as CSPTs cannot fill in for Radiology technicians and vice versa. However, CSPTs often interact with Radiology technicians. For example, MRI technicians use an Alaris Pump on some patients. When needed, CSPTs visit the MRI trailer to update the data on the Alaris Pump. CSPTs also interact with the Radiology technicians when they visit the various Radiology departments to install, maintain, or troubleshoot the Pyxis machines and their software. Like the Employer's other employees, CSPTs and Radiology technicians fall under the same Human Resources department and have access to the cafeteria.

II. ANALYSIS

A. Technical Employees

The general test to see if an employee falls under the technical classification is whether the employee's "work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through specialized courses[.]" but does not meet the requirements of a professional employee.¹⁶ Although more often articulated in the context of determining whether an individual is a supervisor as defined by Section 2(11) of the Act, the Board considers the use of independent judgment to constitute an individual's ability to "act or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data." See e.g., *Oakwood Healthcare, Inc.*, 348 NLRB 686, 693 (2006). On the other hand, a judgment is not independent "if it is dictated or controlled by detailed instructions, whether set forth in company

¹⁵ CSPTs, pharmacists, and nurses do not have the authority to change a doctor's order. Only the doctor who made the order can change their order.

¹⁶ *Rhode Island Hospital*, 313 NLRB 343, 352 (1993) (internal citations omitted).

policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.” *Id.*

In the absence of requirements for extensive training and certification, the Board has generally found pharmacy techs not to be technical employees.¹⁷ For example, in *Meriter Hospital*, supra at 601, the Pharmacy Technicians II prepared orders for prescriptions, compounded IV solutions; re-stocked drugs in nursing units; and ordered drugs. Nevertheless, the Board in *Meriter Hospital* affirmed the Regional Director's finding that the Pharmacy Technicians II were not technical employees, noting that they were not required to have certifications. By contrast, in *Duke University*, 226 NLRB 470, 472 (1976), the Board found pharmacy techs to be technical employees because they pulled orders and filled prescriptions under a pharmacist's direction, and were required to complete a six-month course of study at a technical institute to obtain a certification.

1. PTs Are Technical Employees

After carefully considering extant law and the record evidence, I find that the PTs herein are technical employees. First, unlike the circumstances in *Meriter Hospital*, *Rhode Island Hospital*, and *Southern Maryland Hospital*, where the Board found pharmacy technicians not to be technical employees, the PTs at issue here are required to have a State of California Pharmacy Technician license which, in turn, requires completion of a formal Pharmacy Technician program which takes about a year to complete. The licensure and educational requirements for PTs here are more akin to those in *Duke University*, where the Board found pharmacy technicians to be technical employees. Second, PTs exercise a significant amount of independent judgment. PTs prioritize their daily assignments and responsibilities largely on their own. They independently determine the order in which to complete their assignments based on variable circumstances, such as the urgency of the orders, the amount of time it will take to complete the orders, and the times/deadlines of the orders. They do not consult, or adhere to, any set of instructions and they do not perform their work by rote. PTs also exercise independent judgment when comparing data to ensure that par level is met when determining the amount of each drug to use for compounding. In sum, based upon the record evidence, I conclude that the PTs’ “work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through specialized courses” and that the PTs thus fall within the technical classification.

¹⁷ See *Rhode Island Hospital*, supra at 356 (pharmacy techs not found to be technical employees where only requirements were a high school education, one to two years of college or comparable work experience, and successful completion of a 15-week technician training program); *Meriter Hospital*, 306 NLRB 598, 601 (1992) (pharmacy techs I and II found not to be technical employees where there was no requirement for outside training or certification); and *Southern Maryland Hospital Center, Inc.*, supra (pharmacy techs not found to be technical employees where they were required to complete only a six-week training course and to receive on-the-job training).

2. CSPTs are Technical Employees

Based on extant law and the record evidence, I also find that the CSPTs herein are technical employees. Like the PTs, CSPTs are required to have a State of California Pharmacy Technician license which requires completion of a formal Pharmacy Technician program that lasts about one year. The licensure and educational requirements for CSPTs are analogous to those in *Duke University*, supra. CSPTs also exercise independent judgment when they troubleshoot the computer system to ensure that it correctly interfaces with other software and Pyxis machines. Their exercise of independent judgment is manifested by their ability to reconfigure on their own the computer software to allow pharmacists to pull drugs from certain areas within the facility, and to allow Radiology technicians to more easily search for drugs in the Pyxis software. CSPTs also exercise considerable independent judgment when setting up new Pyxis machines and troubleshooting them, in deciding how to configure the placement of drugs within those machines, and in the corresponding changes they have to make in the Pyxis software.

B. Community of Interest

Having found that the PTs and CSPTs are technical employees, Petitioner's remaining burden of proof is to establish that those two classifications are a distinct segment (or readily identifiable group) that shares a community of interest with the existing Technical Unit. See *St. Vincent Charity Medical Center*, supra. With regard to community-of-interest in *Armour-Globe* cases, the Board looks at the usual factors to determine whether a group of employees should be added to an existing unit. See, e.g., *John Scripps Newspaper Corp.*, 329 NLRB 854 (1999) (citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962)). Essentially, the Board considers whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002).

Based on my finding that PTs and CSPTs are technical employees that regularly interact with one another and where substantial functional integration exists, I find that they are an identifiable and distinct segment of the workforce. I find no evidence on this record to indicate that allowing them to join the existing Technical Unit would unduly fragment the workforce. On the contrary, I find that the PTs and CSPTs share a strong community of interest with each other and with the employees in the existing Technical Unit, such that the petitioned-for unit is an appropriate voting group for a self-determination election.

PTs and CSPTs share some common supervision, similar wages and benefits, common skills and functions (similar training and educational requirements), some interchange (CSPTs performing PT work), and frequent and substantial contact and interaction exist between PTs and CSPTs, and between that identifiable group and the Radiology techs. Both groups regularly interact substantively with one another as they work hand-in-glove to deliver patient services

through collective troubleshooting and maintenance of Pyxis machines and their software. Substantial functional integration exists given that much of the PTs' and CSPTs' workload is driven by the Radiology technicians' need for reliable and efficient drug dispensing. Frequent contact among the groups occurs throughout the facility. Radiology technicians frequently visit the Pharmacy and consult directly with PTs to obtain drugs, and PTs and CSPTs regularly interact with Radiology technicians when they visit the various Radiology departments to install, stock, maintain, and repair or adjust Pyxis machines and their software. In this regard, the two groups share similar skills, functions, and equipment by virtue of their common use of the same Pyxis machines and the related software to perform much of their work. Finally, PTs, CSPTs, and Radiology technicians fall under the same Human Resources department and are subject to many, if not all, of the same Employer policies. Taken together, the above factors support a finding that a community of interest exists between the PTs, CSPTs and the existing Technical Unit. See e.g., *Public Service Company of Colorado*, 365 NLRB No.104 (July 5, 2017) (Board found a community of interest between the existing maintenance unit and the petitioned-for planners/schedulers due to a high degree of functional integration and frequent and substantial contact).

III. CONCLUSION

To briefly reiterate, an *Armour-Globe* election permits unrepresented employees who share a community of interest with an already represented unit of employees to vote whether they wish to be added to the existing bargaining unit. *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990); *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937). If a majority of the employees vote against representation, they are considered to have indicated a desire to remain unrepresented, but if a majority votes for the petitioner they are deemed to have indicated their desire to become part of the existing unit, represented by the incumbent union. *Warner-Lambert Co.*, 298 NLRB 993 (1990).

As discussed above, the Board's Health Care Rule specifically excepts from its coverage "existing nonconforming units," and a union may petition for a self-determination election among a small group of residual employees to determine whether they want to join an existing non-conforming unit already represented by the union. Based upon the entire record in this matter and in accordance with the discussion above, I conclude that the PTs and CSPTs are technical employees that belong in the petitioned-for unit, and that the petitioned-for unit is a readily identifiable group that shares a community of interest with the existing Technical Unit.

In sum, I find that:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that the Employer is an employer as

defined in Section 2(2) of the Act, is engaged in the business of operating an acute care hospital, is engaged in commerce within the meaning of Sections 2(6) and (7) and (14) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The parties stipulated, and I find, that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties stipulated, and I find, that the Nuclear Medicine Technicians and Nuclear Cardiovascular Technicians¹⁸ should be, and are, included in the appropriate voting unit.

6. The following employees of the Employer constitute an appropriate voting unit for the self-determination election directed herein:

Full-time and regular part-time (including per diem) Pharmacy Technicians, Clinical Systems Pharmacy Technicians, Nuclear Medicine Technicians, and Nuclear Cardiovascular Technicians; excluding all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot self-determination election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by National Union of Healthcare Workers.

A. Election Details

The election will be held on Tuesday, March 5, 2019, from 6:00 a.m. – 8:00 a.m., and Noon – 3:00 p.m. in the Magnolia room at the Employer's Greenbrae facility.

B. Voting Eligibility

The parties agree that the Board's default *Davison-Paxon* voter-eligibility formula applies here. Eligible to vote are those in the unit who were employed during the payroll period ending **February 16, 2019**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the

¹⁸ On the record, the parties also referred to these two classifications as Nuclear Medicine Technologists and Nuclear Cardiovascular Technologists; however, the preponderance of the record evidence indicates that they are more accurately referred to as "Technicians."

unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by February 22, 2019. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not

object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the forthcoming Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: February 20, 2019

/s/ Jill H. Coffman

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